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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,932	09/09/2003	David N. Ku	8537-3	3113
20792 7590 05/25/2007 MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			EXAMINER WILLSE, DAVID H	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 05/25/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

### Application No.

10/658,932

### Applicant(s)

KU, DAVID N.

### Examiner

Dave Willse

### Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 34-73 is/are pending in the application.
- 4a) Of the above claim(s) 8, 10-12, 27, 53-55 and 70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9, 13-26, 28, 29, 34-52, 56-69 and 71-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7, 9, 13-26, 28, 29, 34-52, 56-69, and 71-73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. In claim 1 and other claims, the negative limitations “devoid of internal reinforcing material” and devoid of endplates (e.g., claim 1, line 2) are not taught or suggested in the original disclosure. The mere absence of a positive recitation is *not* a basis for an exclusion (MPEP § 2173.05(i)). In fact, the Applicant actually describes and claims embodiments having internal reinforcing material (e.g., paragraphs **0046**, **0051**, and **0054**; claim 59) and endplates (e.g., paragraph **0053**; claim 73 ). In claim 4, lines 3-4, the addition of the term “about” to the range set forth at page 12, lines 2-3, of the specification alters the lower and upper limits of said range to vague values unsupported by the original disclosure (MPEP § 2163.05). Similar problems occur in claims 29, 53 (withdrawn), 64, and 65. The range defined in withdrawn claim 10 is not found in the original disclosure. In claim 34, the pair of ranges pertaining to “at least 2 degrees of rotation between the superior and inferior faces with torsions of at least 1 N-m without failing” is not supported by the original disclosure. In claim 35, last line, the “fabric mesh molded *only* to *exterior* surfaces” of the hydrogel (emphasis added) is not discussed in the original disclosure. In claim 47, the “*monolithic* body of freeze-thaw cryogel that defines a core *and* annulus” (emphasis added) is not taught by the original

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disclosure. The further limitations of claim 10 (withdrawn), 54 (withdrawn), 66, and 69 are likewise unsupported in the original disclosure. *Other errors were noted.* The withdrawn claims are discussed above in an effort to advance prosecution of the instant application. The prior art rejections under 35 U.S.C. 103(a) have been withdrawn *without prejudice*; prior art may be applicable once the aforementioned problems have been resolved.

The Applicant's remarks, which make no reference to the Applicant's own specification (MPEP § 2163.06, section I, last sentence), are deemed to be moot in view of the new grounds of rejection presented above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is 571-272-4762 and who is generally available Monday through Thursday and often on Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



**Dave Willse**  
**Primary Examiner**  
**Art Unit 3738**